

JUDD BURSTEIN, P.C.  
Judd Burstein (Admitted *pro hac vice*)  
1790 Broadway, Suite 1501  
New York, New York 10019  
Tel (212) 974-2400 Fax (212) 974-2944  
E-mail [jburstein@burlaw.com](mailto:jburstein@burlaw.com)

LONG & LEVITT LLP  
Kim O. Dincel, Esq. (SBN 131563)  
465 California Street 5th Floor  
San Francisco, California 94104  
Tel (415) 397-2222 Fax (415) 397-6392  
E-mail [kdincel@longlevitt.com](mailto:kdincel@longlevitt.com)

*Attorneys for Plaintiff,*  
SHANE D. MOSLEY, SR.

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

SHANE D. MOSLEY, SR.,

*Plaintiff,*

vs.

VICTOR CONTE,

*Defendant.*

08-Civ-1777 (JSW)

**DECLARATION OF SHANE D.  
MOSLEY, SR.**

Date: August 22, 2008

Time: 9:00 a.m.

Courtroom: 2, 17th Floor

Hon. Jeffrey S. White

SHANE D. MOSLEY, SR., hereby declares under penalty of perjury:

1. I am the Plaintiff in this action.

2. I submit this Declaration to demonstrate why Defendant Victor Conte's ("Conte" or "Defendant") motion to strike the complaint has no merit. The purpose of this Declaration is to place before the Court factual information relevant to the opposition to Defendant's motion.

1       3. I am a professional boxer, and I have been defamed by Defendant, the infamous  
2 principal of the Bay Area Laboratory Co-operative ("BALCO"), on multiple occasions.

3       4. Derryl Hudson ("Hudson") was my strength and conditioning coach in and  
4 around July 2003.  
5

6       5. In or about July of 2003, on the suggestion and recommendation of Hudson,  
7 Hudson and I traveled to BALCO's offices to meet with Conte.

8       6. Hudson told me that he knew BALCO through his work as a track and field  
9 coach.  
10

11       7. At the time, Hudson informed me that Conte was very knowledgeable when it  
12 came to various vitamins and nutritional supplements. Hudson said to me, in sum or substance,  
13 that if I were to use the various vitamins and nutritional supplements, it would be the "icing on  
14 the cake" for my training.

15       8. I met with Conte at Conte's business, BALCO, for the purpose of obtaining legal  
16 supplements to aid my training. At this meeting with Conte, samples of my blood were taken  
17 and analyzed. Conte then recommended a regimen of products that he told me would help with  
18 my endurance.  
19

20       9. This was the only trip I ever made to BALCO and the only time I ever spoke with  
21 Mr. Conte.  
22

23       10. Further, at the meeting with Conte, I specifically asked Conte for assurances that  
24 everything that he was recommending was both legal and healthy. Conte specifically gave me  
25 that assurance. His public claims to the contrary, in which he explained to me that he was  
26 recommending illegal substances and procedures, are a lie.  
27  
28

1           11. Significantly, I have never denied taking the products recommended to me by  
2 Conte. Indeed, I forthrightly testified about them before the Grand Jury. However, I have  
3 always denied that Conte ever told me, or that I knew, that I was taking anything that was illegal  
4 or in any way barred by the rules of my sport.

5  
6           12. I purchased and received the following supplements from BALCO: "The Cream",  
7 "The Clear", and Erythropoietin (EPO). I admitted to the Grand Jury that I had made these  
8 purchases. However, at no time was I ever told, by Conte or anyone associated with BALCO or  
9 Hudson, that these products were steroids or illegal or banned performance enhancing drugs. In  
10 other words, Conte never told me, in sum or substance, that the supplements provided to me by  
11 or on behalf of Conte or BALCO were undetectable steroids or other banned substances that  
12 would not show up in a drug test. To the contrary, I explicitly sought and received Conte's  
13 assurance that everything he was recommending was entirely legal and authorized for use in my  
14 sport.  
15

16  
17           13. I did not take any supplements with me when we left BALCO's offices. Rather, a  
18 package was subsequently sent to Hudson, who thereafter administered a variety of supplements  
19 to me.

20  
21           14. From the inception of my dealings with Conte, I was assured by both Hudson and  
22 Conte that everything that Conte was recommending was legal, healthy, and not in any way  
23 barred by the rules of my sport. Both Conte and Hudson specifically gave such assurances.

24           15. Contrary to Hudson's declaration dated May 21, 2008, I never "admitted to [Mr.  
25 Hudson, or anyone for that matter,] that [I] knew the drugs provided to [me] by Mr. Conte were  
26 illegal performance enhancing drugs." Nor did Hudson ever tell me that such drugs were illegal  
27  
28

1 or barred by the rules of my sport. Moreover, I never discussed with Hudson, either before we  
2 went to BALCO or after, that we were securing any such drugs.

3 16. In stark contrast to Hudson's assertions, and as set forth above, I have always  
4 denied that Conte ever told me, or that I knew, that I was taking anything that was illegal or in  
5 any way barred by the rules of my sport. Indeed, in January of 2004, I submitted a declaration to  
6 the Nevada State Athletic Commission affirming that I was told, *inter alia*, that the supplements  
7 were completely legal. See Exhibit A hereto, a true and accurate copy of my January 13, 2004  
8 declaration, with exhibits.  
9

10 I declare under penalty of perjury under the laws of the United States that the foregoing is  
11 true and correct. Executed this 13th day of June 2008.  
12

13   
14 SHANE D. MOSLEY, SR.  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

EXHIBIT A

JAN 13 2004

**DECLARATION UNDER PENALTY OF PERJURY**

SHANE MOSLEY hereby declares under penalty of perjury:

1. In the Summer of 2003, as I was training for my September 13, 2003 bout with Oscar De La Hoya, it was suggested to me by my conditioning coach that I purchase various vitamins and nutritional supplements from Balco Laboratories. I was told that Balco worked with many world-class athletes.
2. When Balco was contacted by telephone, they advised that I should travel to Balco's offices so that blood work could be performed, and a detailed plan for me could be prepared. It was explained that the blood work would identify specific mineral and vitamin deficiencies so that Balco could address them.
3. A few days thereafter, I traveled to Balco's offices with my conditioning coach. This was the only trip I ever made to Balco and the only time I ever spoke with Mr. Conte. We met briefly at Balco's offices with Mr. Conte and another individual, and then went to a nearby hospital for blood to be drawn. Thereafter we went to lunch and then returned to Balco's laboratories. Mr. Conte told me that, based upon my blood work, he would prepare a program for me. During this meeting, I specifically told him that I wanted to be sure that he would not give me anything that was illegal or banned. I did this for two reasons. First, and foremost, I did not want to take anything that could do harm to me. Second, I was aware of the problems that Fernando Vargas had after his fight with Oscar De La Hoya, and wanted to be 100% sure that I would not have similar problems. Mr. Conte assured us that everything he would send me was 100% legal and proper. I was told that these completely legal supplements would increase my stamina and my recovery time in training.
4. I did not take anything with me when we left Balco's offices. Rather, a package was subsequently sent to my conditioning coach, who thereafter administered a variety of supplements

to me. Having been assured by Mr. Conte, who I knew supplied many other famous athletes, that he would only give me supplements that were completely legal, I did not focus in any way on what I was taking.

5. In late September of 2003, I learned of the investigation into Balco. Thereafter, on October 2, 2003, I submitted to a lie detector test in Las Vegas. The results of that test are annexed hereto.

Dated: January 13, 2004

  
SHANE MOSLEY

02/13/2008 15:33 7024862577

NSAC

PAGE 04  
004

**W.E.K. SECURITY & POLYGRAPHS  
284 COLONY STREET  
WEST HEMPSTEAD, NEW YORK 11552**

Judd Burstein  
Attorney @ Law  
1790 Broadway  
New York, New York 10019

Mr. Burstein:

October 6, 2003

On October 2, 2003 I met with you and your client, Mr. Shane Mosley. You explained to me that there are some allegations concerning Mr. Mosley and the use of steroids. You advised me that Mr. Mosley is a professional fighter and recently fought against Oscar DeLaHoya. Although a drug test subsequent to the fight was negative concerning illegal substances in Mr. Mosley's body, Mr. Mosley wanted to take a polygraph concerning his belief that he never, knowingly, took any illegal substances.

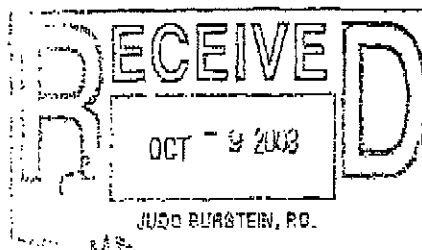
I interviewed Mr. Mosley, explained the polygraph to him and reviewed the test questions with him prior to the test. I asked Mr. Mosley the following relevant questions during the test:

- 1) Did you visit Balco Labs only once?  
Answer: Yes
- 2) Did you tell your conditioning coach, Darryl, that you wanted only legal supplements used?  
Answer: Yes
- 3) Did you tell Victor Conte that you only wanted legal supplements?  
Answer: Yes
- 4) As of the date of the DeLaHoya bout in September, 2003 did you believe you had taken any illegal substances?  
Answer: No

It is the opinion of the polygrapher, based on the polygraph charts, that no deception is indicated when Mr. Mosley answered these questions.

Respectfully submitted:

*William E. Kelly*  
William E. Kelly  
Member, National Polygraph Association





02/13/2008 15:33 7024862577

NSAC

PAGE 05  
0005

10/01/2003 15:13 516-481 22

PAGE 02

**WILLIAM E. KELLY, C.P.P.**284 Colony Street  
West Hempstead, NY 11552  
(516) 481-1222**Professional Experience:**

1995-present W.E.K. Security & Polygraphs Inc.

1992-1995 New York Post  
Director of Security/Fire Safety

1989-1992 Manhattan East Suite Hotels  
Director of Security/Fire Safety

1988-1989 PLE/Division of Business Risks International -  
N.E. Regional Director- Corporate Drug Programs

1987-1988 Peter's Bag Corporation/Owner  
Chairman/President-Luggage Company

1963-1987 Federal Bureau of Investigation (24 years)  
Birmingham, Alabama; Los Angeles, CA; Detroit,  
Michigan; New York City (20 years)

Supervisory Agent - responsible for Agent firearm training program, police training programs, and liaison activities with law enforcement agencies and private industry within the New York City metropolitan area. Guided, directed and monitored investigative activities of assigned agents in the investigation of major property crimes.

Special Agent - worked criminal and espionage cases; received in excess of 30 commendations from the Director, FBI; Police Instructor from 1966; successful completion of Management Aptitude Program in 1978 (rating of 4); National Academy Counselor, 1975; Polygraph Examiner since 1974.

1960-1963 Metropolitan Life Insurance Company, NYC  
Advanced Management Training Program

1957-1960 St. Vincent's Hospital, NYC  
Reiss Pavilion Psychiatric Technician

**Associations:** National Polygraph Association  
American Society for Industrial Security  
FBI National Academy Associates (Counselor 1975)  
Chairman-Former FBI Agent's Association (1992)  
President-National Law Enforcement Assoc. (1999)

**Education:** C.P.P.-Certified Protection Professional (1991)  
MBA-Human Resources; May 1986, Adelphi University,  
Garden City, New York  
FBI Academy, Quantico, Virginia, 1963  
BA-Psychology; June 1960; Fordham University,  
Bronx, New York